

H.R. 2944
AMENDMENT TO AMENDMENT IN THE NATURE OF
A SUBSTITUTE
OFFERED BY MR. LARGENT

Page 67, after line 17, insert:

1 **SEC. 404. MARKET POWER.**

2 (a) AMENDMENT OF FEDERAL POWER ACT.—Part
3 II of the Federal Power Act is amended by adding after
4 section 219 the following new sections:

5 **“SEC. 220. MARKET POWER IN ELECTRIC SALES.**

6 “(a) DEFINITION OF MARKET POWER.—The term
7 ‘market power’ as used in this section, means the ability
8 of an electric utility to profitably maintain prices for retail
9 sales of electric energy above competitive levels for a sig-
10 nificant period of time.

11 “(b) STATE PETITION.—If a State commission in a
12 State where local distribution facilities are subject to open
13 access has reason to believe that an electric utility that
14 sells electric energy to retail electric consumers in that
15 State has market power, the State commission may apply
16 for an order under this section.

17 “(c) MITIGATION PLAN.—If, after receipt of such an
18 application and after notice and opportunity for a hearing,
19 the Commission determines that—

1 “(1) the electric utility has market power in the
2 sale of electric energy at retail in the State;

3 “(2) this market power would adversely affect
4 competition in the State; and

5 “(3) the State commission lacks authority to ef-
6 fectively remedy such market power.

1 “(e) RELIABILITY.—No order may be issued or plan
2 approved under this section if the Commission determines
3 that such order or plan would unreasonably impair the re-
4 liability of any electric system affected by such order or
5 plan.

6 “(f) STATE AUTHORITY.—Nothing in this section af-
7 fects the authority of States to require any State regulated
8 electric utility to take any action, or cease taking any ac-
9 tion, in addition to the actions required by the Commission
10 or by a plan under this section to remedy the exercise of
11 market power by such electric utility to the extent such
12 State actions are not inconsistent with any order or plan
13 under this section.

14 “(g) TERMINATION.—The Commission shall termi-
15 nate an order issued under subsection (c)(2) to any elec-
16 tric utility whenever, on its own motion or upon petition
17 of any affected person, the Commission determines that
18 such order is no longer necessary to reduce or eliminate
19 the exercise of market power by such electric utility.

20 “(d) EFFECTIVE DATE.—This section shall take ef-
21 fect on the date of enactment of this Act.

22 “(j) SENSE.—The authority granted the Commis-
23 sion by this section shall terminate on January 1, 2005.”.

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Page 74, strike lines 3 through 5 and insert:

1 “Eighteen months after the enactment of this
2 Act, the provisions of this title shall apply in lieu of
3 the provisions of the Public Utility Holding Com-
4 pany Act of 1935, except that the Public Utility
5 Holding Company Act of 1935 shall remain in effect
6 with respect to any holding company system which
7 includes one or more subsidiary companies that are
8 public utility companies if such public utility com-
9 pany or companies provide retail electric service in
10 two or more States in which each distribution utility
11 subject to State jurisdiction does not provide open
12 access service.

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Page 20, after line 5, insert the following paragraph
(and redesignate subsequent paragraphs accordingly):

1 “(2) COMMISSION AUTHORITY.—Upon its own
2 motion or upon application or complaint and after
3 notice and an opportunity for a hearing, the Com-
4 mission may order the establishment of regional
5 transmission organizations; order a transmitting
6 utility to relinquish ownership or control over oper-
7 ation of its transmission facilities to a regional
8 transmission organization meeting the standards of
9 paragraph (3) for regional transmission organiza-
10 tions; subject generators to the control of such entity
11 consistent with other laws to the extent necessary to
12 permit reliable operation of the transmission facili-
13 ties; or take any combination of these actions, if the
14 Commission finds this action is appropriate to pro-
15 mote competitive electricity markets and efficient,
16 economical, and reliable operation of the interstate
17 transmission grid.

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Page 87, strike line 21 and all that follows down
through line 14 on page 88 and insert:

1 (a) BAR ON TENNESSEE VALLEY AUTHORITY RE-
2 TAIL SALES.—Notwithstanding section 10 of the Ten-
3 nessee Valley Authority Act of 1933 (16 U.S.C. 831i), the
4 Tennessee Valley Authority shall not sell or deliver electric
5 energy to any end use or retail customers that did not
6 have a contract for the purchase of electric energy with
7 the Tennessee Valley Authority for services to specific fa-
8 cilities on the date of enactment of this Act.

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Page 90. strike line 14 and all that follows down
through line 24 and insert:

1 Notwithstanding any other provision of law, the Ten-
2 nessee Valley Authority shall not acquire any new major
3 generating resource after the date of enactment of this
4 Act unless contractual or other financial arrangements
5 have been made to ensure that the customer or customers
6 on whose behalf the resource is acquired commit to pay
7 the full costs of the resource, and the Tennessee Valley
8 Authority shall not acquire any new generating resource
9 that it reasonably expects will necessitate the use of its
10 authority to recover otherwise nonrecoverable costs pro-
11 vided in section **[408.] [INCORRECT SECTION REF-**
12 **ERENCE]**